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VIA CM/ECF

Molly C. Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

RE: Rogan O’Handley v. Shirley Weber et al., 9th Circuit Case No. 22-15071
Citation of Supplemental Authority (FRAP 28(j))

Dear Ms. Dwyer:

Appellant Rogan O’Handley respectfully submits the following citation of supplemental authority pursuant to Federal Rule of Appellate Procedure Rule 28(j).

In *NetChoice, LLC v. Paxton*, --- F.4th ---, 2022 WL 4285917 (5th Cir. Sept. 16, 2022), the Fifth Circuit held that social-media companies, including Twitter, do not have a First Amendment right to moderate content on their platforms and, even if they did, Texas’s efforts to regulate them through a law prohibiting social-media companies from engaging in viewpoint-based censorship of their users’ content satisfied intermediate scrutiny. *Id.* at *8–20, *30–34. The Fifth Circuit concluded that the Texas law did not implicate social-media companies’ First Amendment rights because it neither compelled them to speak nor prohibited them from speaking. *Id.* at *9–16. The Fifth Circuit rejected social-media companies’ claim that their content-moderation decisions were protected speech under the rubric of “editorial discretion.” *Id.* at *16–18. Further, the Fifth Circuit observed that social-media companies’ assertion of a First Amendment right to moderate content was irreconcilable with their longstanding assertion that they “merely serve as ‘conduits’ for others’ speech” for purposes of 47 U.S.C. § 230. *Id.* at *19–20.

NetChoice is instructive here. Among other things, the Fifth Circuit rejected the exact same First Amendment arguments Twitter raises here. *Id.* at *9–20. The Fifth Circuit’s conclusion that Twitter does not have a First Amendment right to censor its users’

tweets mirrors Appellant's argument in both his Opening Brief, ECF No. 17 at 48–56, and his Reply Brief, ECF No. 53 at 20–28. Appellant therefore respectfully requests this Court consider the persuasive and thorough analysis in *NetChoice* when deciding this case.

Respectfully submitted,

A handwritten signature in blue ink that reads "Harmeet K. Dhillon". The signature is fluid and cursive, with a long horizontal stroke at the end.

Harmeet K. Dhillon

cc: Counsel of Record (via CM/ECF)

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